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September 23, 2003

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Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: **EX PARTE**
Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128

Dear Ms. Dortch:

On September 22, 2003, the undersigned, representing OCMC, Inc. ("OCMC") spoke by telephone with Greg Cooke, Henry Thaggert and Jack Yachbes of the Competition Policy Division of the Commission's Wireline Competition Bureau to discuss issues raised in comments and recent ex parte statements filed by other parties in the above-referenced docket. In particular, OCMC expressed its concerns as to burdensome requirements for switch-based resellers ("SBRs") proposed by MCI and other interexchange carriers ("IXCs"). Such proposals would be considerably less cost effective in assuring payphone service providers ("PSPs") that they are receiving full payphone compensation than alternative means available to the Commission.

OCMC explained that certain IXC proposals could not be justified whether the Commission chooses an "SBR pays" or an "IXC pays" system of payphone compensation for calls routed to SBRs. Ideally, a return to an SBR pays system would avoid any IXC involvement in payphone compensation for calls routed to SBRs and thereby free IXCs of their unwanted middleman role. Once an IXC routes a call to a carrier that certifies that it is an SBR, the IXC should no longer have any responsibility for payphone compensation for that call. PSPs would be fully protected under such a system as long as IXCs were required to send PSPs data as to all calls they route to SBRs and SBRs were required to provide PSPs with call detail information as to all calls they complete. No further reporting or third-party verification requirements are necessary.

OCMC particularly objects to MCI's request for an intrusive, expensive third-party audit and certification scheme, under which SBRs would have to prove the accuracy of their call tracking and reporting systems before being allowed to fulfill their payphone compensation obligations on their own. Although the elaborate procedure described by MCI would pose an insignificant resource burden for a company of its immense size, this procedure would add tremendous costs to its smaller competitors, such as OCMC. Moreover, under MCI's proposal, in the case of an SBR that does not "pass" such an audit, IXCs routing payphone calls to the SBR would take over its payphone compensation obligations on those calls and be allowed to demand reimbursement from the SBR. In light of this aspect of MCI's proposal, it would be particularly inappropriate to single out SBRs for special audit requirements that do not also apply equally to IXCs.

OCMC agrees with the ex parte statements of IDT Corporation ("IDT")[1] and the "Joint SBRs"[2] that SBRs should not be subject to such unique audit requirements, particularly in advance of an actual dispute raised by a PSP as to an SBR's reporting and compensation payments. As the Joint SBRs suggest, it would be fairer and more reasonable to conduct third-party verification only if and when a good-faith dispute arises, and the cost of such verification should be borne by the "losing" party.[3] Finally, it would be inaccurate to characterize a third-party audit requirement as a "default" procedure simply because it is limited to those cases in which an SBR does not have direct payment arrangements with PSPs or has not authorized IXCs to pay compensation on its behalf. Even for an SBR such as OCMC, which has had direct payment arrangements with most of the PSPs originating calls routed to it for years, there are bound to be some PSPs originating calls routed to the SBR with which it does not have direct payment arrangements. If those few PSPs trigger the third-party audit requirement for such an SBR, that requirement will apply to every SBR, with no exceptions. It cannot be characterized as a "default" provision.

If the Commission believes that PSPs would need additional assurance under an SBR pays system that they are receiving the correct payphone compensation on calls routed to SBRs, Qwest's annual certification proposal offers a far more cost effective check on SBR reporting accuracy than MCI's burdensome third-party audit proposal.

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[1] Letter from Carl Wolf Billek, IDT Corporation, to Marlene Dortch, Secretary, FCC (Sept. 12, 2003) at 1-2.

[2] Letter from James H. Lister, Counsel to the Joint SBRs, to Marlene Dortch, Secretary, FCC (Sept. 12, 2003).

[3] *Id.* at 3-4.

As Qwest points out in its recent ex parte statement, its annual certification proposal would eliminate SBRs' incentives to under-report call completion data to PSPs.[4]

Alternatively, if the Commission decides to readopt an "IXC pays" system in order to fully protect PSPs' rights to payphone compensation, it should do so in the manner set forth in the *Second Reconsideration Order*[5] and *Third Reconsideration Order*,[6] with no further conditions or obligations placed on SBRs that would enable IXCs to make unreasonable demands on SBRs. The only information that an IXC needs from an SBR under an IXC pays system is a list of the 800 and other toll-free access numbers served by the SBR, so that IXCs would know which calls fell outside their payphone compensation obligations. If SBRs also provide to PSPs call detail information on all completed calls for which they are paying compensation directly to the PSPs, all interested parties should be fully protected.[7]

OCMC also opposes Sprint's proposal that an SBR having direct payment arrangements with one PSP should be required to have such arrangements with all PSPs and the IXCs' proposals that SBRs be required to notify IXCs of all of their direct payment arrangements with PSPs. Sprint's "all-or-nothing" proposal is designed to restrict SBRs' direct payment arrangements with PSPs and, as such, conflicts with the principle stated in the *Third Reconsideration Order* that "[a]ny practice by an entity that restricts the ability of SBRs to enter into such agreements runs counter to the letter of" the *Second Reconsideration Order*.[8] Similarly, SBRs should not have to disclose their direct payment arrangements with PSPs to IXCs because many PSPs with whom SBRs

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[4] Letter from Cronan O'Connell, Qwest, to Marlene Dortch, Secretary, FCC (Sept. 10, 2003) at attachment.

[5] *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Second Order on Reconsideration, 16 FCC Rcd 8098 (2001) ("*Second Reconsideration Order*"), *remanded sub nom., Sprint Corp. v. FCC*, 315 F.3d 369 (D.C. Cir. 2003).

[6] *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Third Order on Reconsideration and Order on Clarification, 16 FCC Rcd 20922 (2001) ("*Third Reconsideration Order*").

[7] Qwest's proposal that carriers post on the Internet a current list of all of the 800 numbers they serve would simply duplicate the reporting requirements suggested above and, by making such information publicly available, would be far more intrusive than necessary to protect PSPs' and IXCs' legitimate interests.

[8] *Third Reconsideration Order*, 16 FCC Rcd at 20926.

have such arrangements are also their customers. SBRs should not have to disclose what amounts to their customer lists to their larger competitors, the IXCs.[9]

Please call the undersigned with any questions as to these matters. Pursuant to Section 1.1206(b)(2) of the Commission's rules, this ex parte statement is being filed electronically via the Commission's Electronic Comment Filing System for inclusion in the public record of the above-referenced proceeding.

Yours truly,

/s/ Frank W. Krogh
Frank W. Krogh

cc: Christopher Libertelli
Matthew Brill
Jessica Rosenworcel
Daniel Gonzalez
Lisa Zaina
Jeffrey Carlisle
Joshua Swift
Michelle Carey
Greg Cooke
Henry Thaggert
Jack Yachbes

[9] IXCs would not otherwise be aware that an SBR has a direct payment arrangement with a PSP simply because calls originating at the PSPs' payphones are ultimately routed to the SBR. A PSP typically has no connection with the agent controlling the 800 number or other toll-free access code that is served by the SBR. The agent controlling the access code typically has a contract with the SBR under which calls dialed with that code are routed to the SBR. The PSP whose payphone happens to be used to make such an access code call has nothing to do with the ultimate routing of such a call to the SBR. The PSP's relationship with the SBR typically concerns other matters unrelated to the routing of the calls at issue in this proceeding.